

## **CHAPTER 29-31.1 PROPERTY FORFEITURE AND DISPOSITION**

### **29-31.1-01. Definitions.**

In this chapter, unless the context or subject matter otherwise requires:

1. "Forfeitable property" means any of the following:
  - a. Property that is illegally possessed or is contraband.
  - b. Property that has been used or is intended to be used to facilitate the commission of a criminal offense or to avoid detection or apprehension of a person committing a criminal offense. For purposes of this subdivision, property does not include a residence or other real estate where a co-owner, whether by joint tenancy, tenancy in common, or tenancy by the entireties, of the residence or other real estate, has not been convicted of the criminal offense that was facilitated by the use or intended use of the property.
  - c. Property that is acquired as or from the proceeds of a criminal offense.
  - d. Property offered or given to another as an inducement for the commission of a criminal offense.
  - e. A vehicle or other means of transportation used in the commission of a felony, the escape from the scene of the commission of a felony, or in the transportation of property that is the subject matter of a felony.
  - f. Personal property used in the theft of livestock or the transportation of stolen livestock.
2. "Seized property" means property taken or held by any law enforcement agency in the course of that agency's official duties with or without the consent of the person, if any, who had possession or a right to possession of the property at the time it was taken into custody.
3. "Seizing agency" is the law enforcement agency that has taken possession of or seized property in the course of that agency's official duties.

### **29-31.1-02. Disposition of nonforfeitable property.**

Seized property that is not required as evidence or for use in an investigation may be returned to the owner without the requirement of a hearing, if the person's possession of the property is not prohibited by law, the property is not forfeitable property, and there is no forfeiture proceeding filed on behalf of the seizing agency. The seizing agency shall send notice by regular mail, if the value of the property is less than two hundred fifty dollars, or certified mail, if the value of the property is equal to or greater than two hundred fifty dollars, to the last-known address of any person having an ownership or possessory right in the property stating that the property is released and must be claimed within thirty days. Notice is deemed to have been made upon the mailing of the notice. The notice must state that if no written claim for the property is made upon the seizing agency within thirty days after the mailing of the notice, the property will be deemed abandoned and disposed of accordingly. If there is more than one party who may assert a right to possession or ownership of the property, the seizing agency may not release the property to any party until the expiration of the date for filing claims unless all other claimants execute a written waiver. If there is more than one claim filed for the return of property under this section, at the expiration of the period for filing claims the seizing agency shall file a copy of all such claims with the clerk of the district court and deposit the property with the court in accordance with the provisions of chapter 32-11. If no owner can be located or no claim is filed under this section, the property is deemed abandoned and the seizing agency becomes the owner of the property and may dispose of it in any reasonable manner.

### **29-31.1-03. Seizure of forfeitable property.**

Forfeitable property may be seized whenever and wherever the property is found within this state. Forfeitable property may be seized by taking custody of the property or by serving upon the person in possession of the property a notice of forfeiture and seizure. If the court finds that the forfeiture is warranted, an order transferring ownership to the seizing agency must be

entered and the property must be delivered to the seizing agency for disposition as directed by the court. Property that has been seized for forfeiture, and is not already secured as evidence in a criminal case, must be safely secured or stored by the agency that caused its seizure.

**29-31.1-04. Forfeiture proceedings.**

1. Forfeiture is a civil proceeding not dependent upon a prosecution for, or conviction of, a criminal offense and forfeiture proceedings are separate and distinct from any related criminal action.
2. Forfeiture proceedings brought under this chapter must be conducted in accordance with the procedures established for the forfeiture of property in sections 19-03.1-36.1 through 19-03.1-36.7.

**29-31.1-05. Transfer of forfeitable property.**

Title to, and responsibility for, forfeitable property vests with the seizing agency at the time of the seizure. Once forfeitable property is seized, no right to the property may be transferred by anyone other than the seizing agency unless the seizure and forfeiture is declared by the court to be a nullity or as otherwise ordered by the court.

**29-31.1-06. Disposition of forfeited property.**

When property is forfeited under this chapter, the seizing agency may:

1. Retain the property for official use or transfer the custody or ownership of any forfeited property to any federal, state, or local agency.
2. Sell the forfeited property that is not required to be destroyed by law and which is not harmful to the public. The proceeds from the sale, together with any monetary funds ordered to be forfeited, must be used first for the payment of all proper costs and expenses of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising, and court costs with any remaining proceeds to be deposited, subject to section 54-12-14, in the appropriate state, county, or city general fund.
3. Dispose of the property in accordance with the order of the court if the property cannot be retained, used, or sold by the seizing agency.

**29-31.1-07. Nonforfeitable interest - Purchase of forfeitable interest.**

1. Property may not be forfeited under this chapter to the extent of an interest of an owner who had no part in the commission of the crime and who had no knowledge of the criminal use or intended use of the property. However, if it is established that the owner permitted the use of the property under circumstances in which a reasonable person should have inquired into the intended use of the property and that the owner failed to do so, there is a rebuttable presumption that the owner knew that the property was intended to be used in the commission of a crime.
2. Upon receipt of forfeited property, the seizing agency shall permit any owner or lienholder of record having a nonforfeitable property interest in the property the opportunity to purchase the property interest forfeited. If the owner or lienholder does not exercise the option under this subsection within sixty days of mailing of written notice to such person of such option, the option is terminated unless the time for exercising the option is extended by the seizing agency.
3. A person having a valid, recorded lien or property interest in forfeited property, which has not been repurchased pursuant to subsection 2, must either be reimbursed to the extent of the nonforfeitable property interest or to the extent of the amount raised by the sale of the item, whichever amount is less. The sale of forfeited property must be conducted in a manner that is commercially reasonable and calculated to provide a sufficient return to cover the cost of the sale and reimburse any nonforfeitable interest. The validity of a lien or property interest is determined as of the date the property is seized. All costs and expenses of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising, and court costs, must be

first deducted from the sale proceeds and paid to the party incurring such costs and expenses.

4. This section does not preclude a civil suit by an owner of an interest in forfeited property against the party who, by criminal use, caused the property to become forfeited to the seizing agency.

**29-31.1-08. Retention of forfeited property.**

If property forfeitable under this chapter is needed as evidence in a criminal proceeding, it must be retained under the control of the prosecuting attorney, or the prosecuting attorney's designee, until such time as its use as evidence is no longer required.

**29-31.1-09. Disposition of forfeitable property held as evidence in criminal proceeding.**

Notwithstanding other provisions of this chapter, in the case of forfeitable property seized and held as evidence of the commission of a criminal offense, the court in which a criminal prosecution was commenced may issue its order, upon motion and after hearing unless waived, for disposition of the property in accordance with this chapter. Notice of the motion must be served in accordance with the North Dakota Rules of Civil Procedure upon the owner and all persons known to be claiming an interest in the property to be forfeited. The notice must be served at least twenty days before a hearing on the motion unless the time period is waived by all parties claiming an interest in the property. The motion must contain the information required in a complaint as set forth in section 19-03.1-36.3. Although no separate forfeiture proceeding is required to be instituted under this section, all other provisions of this chapter apply to proceedings commenced pursuant to this section.

**29-31.1-10. Inapplicability of chapter.**

The provisions of this chapter do not apply to forfeiture proceedings commenced under other specific provisions of law, including chapters 12.1-06.1, 19-03.1, and 20.1-10.